

Our Reference: GP-304240-OST-ALS

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Appellant:	William E. Mazzara, Jr.
Serial Number:	10/736,491
Filing Date:	December 15, 2003
Confirmation No.:	3801
Examiner/Group Art Unit:	Oluseye Iwarere/3687
Title:	METHOD AND SYSTEM FOR MANAGING PROMOTIONAL TELEMATICS SERVICES

REPLY BRIEF

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Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Please enter the following Reply Brief in response to the Examiner's answer dated December 24, 2009.

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I. STATUS OF CLAIMS

Claims 22-30 are the claims on appeal.

Claims 1-21 were cancelled.

Claims 22-30 were rejected.

II. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

1) Whether claims 22-30 are unpatentable under 35 U.S.C. § 103(a) over Kolls (U.S. Patent No. 6,615,186, referred to herein as “Kolls”) in view of Muratani, et al. (U.S. Patent No. 6,119,109, referred to herein as “Muratani”).

III. ARGUMENTS

The arguments presented hereinbelow address the Examiner's arguments presented in the Answer dated December 24, 2009. It is submitted, however, that the absence of a reply to a specific rejection, issue, comment, or argument in the Answer does not signify agreement with or concession of that rejection, issue, comment, or argument. Finally, nothing in the following arguments of this reply brief should be construed as an intent to concede any issue with regard to any claim, except as specifically stated below.

A. Rejection of claims 22-30 under 35 U.S.C. § 103(a) over Kolls and Muratani

Appellant reiterates all of the arguments set forth in the Appeal Brief dated November 6, 2009 (referred to herein as "the Appeal Brief").

In the Answer dated December 24, 2009 (referred to hereinafter as "the Answer"), the Examiner still submits that Kolls's disclosure that the user may select and download music and video using the Internet based audio and video server routine (see column 53, line 63 through column 54, line 6 of Kolls) is considered to be a promotional service offered as a choice to a user. However, Appellant still *fails* to see how the music and videos described in Kolls are equivalent to a promotional service as is understood by one skilled in the art. Again, a promotional service is a service devised to *publicize or advertise* a product, service, or the like in order to further the growth or development of the product, service, etc. (see, e.g., page 12 of the Appellant's Appeal Brief). A careful reading of the cited passage of the Kolls's disclosure reveals that the music and video may be selected and downloaded by the user; and nothing more. Such is essentially the same as purchasing music or video using an Internet based music/video store.

Furthermore, the example set forth in Fig. 18 of Kolls (i.e., the example using the Internet based audio and video server routine) allows a user to select music and video for download, storage, or playback. In this example, data communication may be established between the Internet based server and an in-vehicle device (identified by reference identifier 200), *which may be facilitated by a COM device* (identified by reference identifier 100). A personalized user play list and settings may then be fetched, e.g., from a local profile within the in-vehicle device 200. (See column 53, line 63 through column 54, line 24 of Kolls.) Thus, Kolls does *not* teach (in this

example, nor in the other examples identified in Appellant's Appeal Brief) that the user of the vehicle may *choose* what information is communicated to or from the COM device 100. In this example, the *entire play list* or settings are fetched and communicated; not just the individual music or video that was downloaded by the user.

In the Answer, the Examiner also directs Appellant's attention to the abstract of Kolls, which states, in part, "[f]urthermore, e-commerce and e-business transactions can include interactive advertising, promotional offers, coupons, and other remote data communications." The Examiner asserts that such disclosure suggests that the user is in control of the system and is able to interact, where such interaction is construed as including a choice. Appellant submits, however, that such disclosure reveals nothing more than a mere statement that e-commerce and e-business transactions may include remote data communications (e.g., promotional offers). Appellant further submits that such disclosure does *not* teach, suggest or otherwise imply that the promotional offers are provided to the user *as a choice*; rather such disclose teaches that e-commerce and e-business can *include* promotional offers. Besides not being explicitly stated in the abstract, Kolls does *not* disclose (by way of description or by example) in the detailed description portion of the reference that promotional services may be provided to the user as a choice (as discussed in the Appeal Brief).

Additionally, the Examiner states that the microcontroller (identified by reference identifier 130 in Kolls) timestamps transactions as they occur, which timestamping is construed by the Examiner as being a monitoring step. The Examiner also states that such timestamping, in combination with a period of free use taught by the Muratani reference, teaches the timing unit recited in Appellant's claim 22.

Again, the Appellant respectfully disagrees with the Examiner, and submits that the period of free use disclosed in Muratani is *not* associated with a promotional service. To reiterate from the Appeal Brief, the period of free use in Muratani may be applied for content specific situations such as, e.g., when 10% or less of a movie is watched using a video-on-demand system, there is no charge for the movie. Appellant submits that the movie *purchased* from the video-on-demand system is not a promotional service (as the term is understood by one skilled in the art).

Furthermore, although Kolls discloses that the microcontroller has a date and time functionality, such disclosure does *not* suggest that the microcontroller monitors a time period (such as a period of free use of a promotional service, as recited in claim 22). A “timestamp” as understood by a skilled artisan is a record of when, e.g., an event occurred. It is submitted that by making a timestamp of the event does *not* imply that the event is also being monitored.

For all of the reasons set forth above, as well as in the Appeal Brief, Appellant submits that claims 22-30 are patentable over the combination of Kolls and Muratani under 35 U.S.C. § 103(a).

IV. CONCLUSION

The Appellant respectfully submits that claims 22-30 as currently pending fully satisfy the requirements of 35 U.S.C. §§ 102, 103 and 112. Accordingly, Appellant respectfully requests that the Board of Patent Appeals and Interferences find for the Appellant and reverse the rejection of each of Appellant's claims 22-30 under 35 U.S.C. § 103(a) over Kolls and Muratani. In view of the foregoing, favorable consideration and passage to issue of the present application is respectfully requested.

Respectfully submitted,

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